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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of  
Toll Free Service Access Codes

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CC Docket No. 95-155

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

INITIAL COMMENTS OF TLDP COMMUNICATIONS, INC.

TLDP Communications, Inc. ("TLDP"), by its attorney, hereby submits these comments in response to the Notice of Proposed Rulemaking ("Notice") in the above-captioned proceeding, released October 5, 1995.<sup>1</sup> For the reasons stated below, the Commission should permit 800 users to exercise a Right of First Refusal with respect to the opening of the 888 NPA, and institute economic incentives to spur the voluntary partition of toll free NPAs between those customers who require an 800 number and those who do not.

I. An Unlimited Right of First Refusal Will Not Have Any Adverse Impact on the Availability of Toll Free Numbers

TLDP applauds the Commission's efforts to ensure that toll free numbers are used in an efficient manner, and its proposal to afford to current holders of 800 numbers a "right of first refusal" to receive equivalent 888 numbers. Such an approach balances well the competing considerations identified by the Commission in its Notice, para. 35, and has the broad support of numerous 800 subscribers who have invested considerable resources in connection with their numbers. Id. at fn. 75.

In this regard, TLDP rejects the suggestion that denying existing 800 customers a "Right of First Refusal" to reserve identical numbers in future toll free service codes may increase the amount

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<sup>1</sup> TLDP is engaged in the marketing of 800 and associated interactive voice response services. Many of its customers employ the use of 800 services. As a result, TLDP has a direct interest in the outcome of this rulemaking.

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of toll free numbers available, thereby extending the life of what is referred to as "a limited resource." Unfortunately, that is not the case.

Denying, or limiting, a Right of First Refusal will not only affect the amount of 888 (or other service code) numbers available on the first day that such a code is opened. If there is no Right of First Refusal, every 800 customer who would have exercised such a right will request its carrier to reserve the corresponding 888 number on the first day that the code is opened. In short, within a matter of days (depending on the ability of the SMS database to process the requests with which it will be inundated), all numbers which would have been reserved will be issued.

In point of fact, the choice is not really between balancing "goodwill and the holder's interest in a vanity number against the need to manage a limited resource." Notice, para. 35. Rather, the true balance is between goodwill (frequently developed at considerable expense) and a flood of unfair competition and trademark litigation which is likely to develop if holders of 800 numbers are not given an opportunity to exercise a Right of First Refusal.

As there is no effective way of preventing the reservation of choice 888 numbers once the service code has been opened, there is no benefit to be achieved by refusing to allow the requested Right of First Refusal. To the contrary, the public interest in minimizing litigation demands recognition of the rights of existing 800 number holders.

## II. The Percentage of "Vanity" 800 Numbers Has Been Substantially Exaggerated

In its Notice, the Commission asks parties to identify the total number of existing vanity numbers or a method for ascertaining how many numbers are or should be regarded as vanity numbers. Notice, para. 40. A brief mathematical analysis indicates that the number of vanity 888 numbers likely to be reserved by the holders of corresponding 800 numbers is relatively small.

1. There are no letters associated with the digits 0 and 1 on the telephone dial. Accordingly, true "vanity" numbers may only contain the eight digits 2 through 8.

2. Of the 8,000,000 numbers available in any given toll free NPA, the number which can correspond to seven letters is 8 to the seventh power, or 2,097,152 -- 25%. As is well known to any Scrabble player, however, not all combinations of letters form words. In fact, the overwhelming majority do not. As a result, the number of seven digit vanity numbers is nearly certainly less than 10 percent of the numbers available.

3. Even if one makes the questionable assumption that the first three digits of a vanity number can be numbers, as long as the last four digits spell something, the number of possible letter combinations in any given three digit office code is limited to 8 to the 4th power, or 4096 -- 41%. Again, when one takes into account the fact that most four letter combinations do not spell anything, even under this extremely liberal definition, the percentage of vanity numbers is likely to be under 20%, and probably less than 10%.

### III. Inefficient Use of Toll Free Resources Can Be Prevented by Economic Incentives

While denial of the Right of First Refusal is not likely to have any impact on the preservation of toll free numbering resources, there is another approach that could -- institution of economic incentives which induce holders of 800 numbers who do not require them to migrate to 888 or another office code.

As has been noted in industry forums over the past 12 months, the primary cause of 800 number exhaustion has been the use of the numbers for services which require a toll free, but not necessarily 800, number, particularly paging and residential 800 services. Rather than impose a fee for the exercise of a Right of First Refusal, Notice at para. 41, the Commission should develop

incentives which will encourage the partition of 800 services, as discussed in para. 46 of the Notice.

TLDP offers two suggestions for accomplishing this objective:

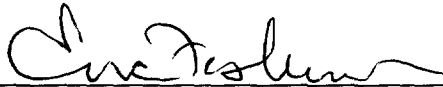
1. Increase the \$0.70/month SMS fee for 800 numbers to \$2.00 or \$3.00 per month, and apply it only to 800 numbers; waiving the fee for 888 and other toll free NPAs;
2. Require providers of 800 service to structure their rates so that 800 service requires a minimum monthly fee, while exempting all other toll free NPAs. The fee would not have to be high -- as little as \$5 to \$10 per month would discourage the overwhelming majority of paging and residential customers from opting for an 800 number. Moreover, carriers are likely to welcome such a move, for it would enable them to develop separate packages for the residential, paging and commercial markets. To avoid discrimination, carriers should be required to make both options available to all 800 users. In practice, however, the overwhelming majority of residential and paging customers are likely to choose non-800 numbers, as well as many commercial users of 800 services.

IV. Conclusion

For the reasons stated above, TLDP respectfully urges the Commission to permit 800 users to exercise a Right of First Refusal with respect to the opening of the 888 NPA, and to institute economic incentives to spur the voluntary partition of toll free NPAs between those customers who require an 800 number and those who do not.

Respectfully submitted,

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